

Case 3:07-cv-05696-SI Document 16 Filed 02/12/2008 Page 1 of 7

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

CLAUDE BRYANT, CRAIG FULCHER,
SANFORD LEVINE and THOMAS
THOMPSON, on behalf of themselves and all
other employees and former employees similarly
situated,

Plaintiffs,

v.

ALDERWOODS GROUP, INC., SERVICE
CORPORATION INTERNATIONAL, SCI
FUNERAL AND CEMETERY PURCHASING
COOPERATIVE, INC., SCI EASTERN
MARKET SUPPORT CENTER, L.P., SCI
WESTERN MARKET SUPPORT CENTER, L.P.
a/k/a SCI WESTERN MARKET SUPPORT
CENTER, INC., SCI HOUSTON MARKET
SUPPORT CENTER, L.P., JANE D. JONES,
GWEN PETTEWAY, THOMAS RYAN, PAUL
A. HOUSTON and CURTIS BRIGGS,

Defendants.

) Case No. CV 07-5696

) PLAINTIFFS' CASE MANAGEMENT
) STATEMENT

Case 3:07-cv-05696-SI Document 16 Filed 02/12/2008 Page 2 of 7

1 Additional Attorneys for Plaintiffs, who will submit
2 applications for admission *pro hac vice*:

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1 Plaintiffs submit this case management statement in lieu of the joint case management
2 statement because Defendants have not yet been served. The deadline for service of the
3 Complaint under the Federal Rules of Civil Procedure is March 10, 2008. Plaintiffs may also file
4 an Amended Complaint prior to the Complaint being served. Plaintiffs are prepared to attend the
5 Case Management Conference. However, Plaintiffs are also amenable to a continuance of the
6 Case Management Conference until all parties have been served.

7 Plaintiffs expect that this statement will be amended, or a joint statement will be submitted,
8 after issue has been joined in this case.

9 **1. Jurisdiction and Service**

10 This Court has subject matter jurisdiction over plaintiffs' claims because they arise out of
11 violations of the Fair Labor Standards Act and therefore present a federal question. Defendants
12 have not yet been served, and Plaintiffs intend to serve the Complaint by March 10, 2008.
13 Plaintiffs may also file an Amended Complaint prior to the Complaint being served.

14 **2. Facts**

15 Plaintiffs Claude Bryant, et al., on behalf of themselves and other employees similarly
16 situated ("Plaintiffs") were employed by Defendants. Plaintiffs allege that, while they were
17 employed by Defendants, Defendants failed to pay Plaintiffs overtime wages for overtime hours
18 worked and failed to provide accurate wage statements.

19 The Complaint sets out Plaintiffs' claims pursuant to the FLSA concerning maintenance of
20 records. Plaintiffs seek to represent a proposed class of current and former employees of
21 Defendants who were employed by Defendants and subject to Defendants' improper pay policies.

22 **3. Legal Issues**

23 The legal issues in this case concern whether the Defendants violated the FLSA, 29 U.S.C.
24 § 201 *et seq.* by failing to pay employees for overtime hours pursuant to various policies
25 maintained by Defendants. For example, Defendants required plaintiffs to perform work, such as
26 on-call work, community work, training and other work, without pay. The legal issues also
27 include whether the Defendants violated the FLSA, 29 U.S.C. § 201 *et seq.* by failing to maintain
28

1 proper records that adequately and accurately reflect hours worked each day and each week, and
2 overtime compensation.

3 **4. Motions**

4 Currently, there are no pending motions. Plaintiffs will likely submit a motion seeking to
5 send court-authorized notice to similarly situated employees. As the case moves forward, there
6 may be motions related to discovery, summary judgment motions, and motions on the pleadings.

7 **5. Amendment of Pleadings**

8 Plaintiffs may amend their Complaint prior to service. However plaintiffs propose that the
9 deadline to amend pleadings after service be set at a date after the close of discovery.

10 **6. Evidence Preservation**

11
12 This issue is more properly directed to Defendants who likely have records concerning the
13 issues in this case, such as the time worked by their employees and how much they were paid.

14 **7. Disclosures**

15 As the defendants have not yet been served, initial disclosures have not yet been made.

16 **8. Discovery**

17 To date, no discovery has been completed in this case. Plaintiffs propose that discovery
18 commence after plaintiffs' motion for conditional certification of the FLSA claims. Plaintiffs
19 propose that the date by which plaintiffs are to submit their motion for conditional certification be
20 set as May 5, 2008. After such motion is determined, plaintiffs proposed that a conference be held
21 with the Court to develop a schedule for discovery.

22 **9. Class Actions**

23 This case is a collective action under the FLSA. Pursuant to 29 U.S.C. § 216(b), other
24 employees may opt into this action. Plaintiffs suggest that the deadline for their motion for
25 conditional certification of a collective action be set as May 5, 2008.

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2 **10. Related Cases**

3 Two cases arising out of employment practices of these defendants are currently being
4 litigated in the Superior Court of the State of California, County of Alameda. These are Bryant, et
5 al. v. Service Corporation, et al. (Case No. RG 07359593) and Helm, et al. v. Alderwoods Group,
6 Inc., et al (Case No. RG 07359602). However, those cases present only state law claims, and the
7 FLSA claims of the Plaintiffs in the instant case are not being litigated in those cases or in any
8 other court. Plaintiffs split their state and federal law claims based on a ruling by the Western
9 District of Pennsylvania in a similar case in which the federal court declined to exercise
10 supplemental jurisdiction over the state law claims.

11 As disclosed in Plaintiffs' Notice of Pendency of Other Actions, filed November 8, 2007,
12 at the time this case was filed, there were two actions pending in federal courts which involved a
13 material part of the same subject matter as the instant action, in that all of these proceedings
14 related to the defendants' policies and practices regarding their employees' overtime pay. The first
15 action, *Prise, et al. v. Alderwoods Group, Inc., et al.* (W.D.Pa. 06-cv-1641)("Prise I"), is a
16 collective action under the Fair Labor Standards Act brought by defendants' current and former
17 employees. None of the Plaintiffs in the instant action are parties to the Prise I litigation and
18 because the opt-in period in that case has passed for most of the Plaintiffs in the instant action,
19 they are not eligible to participate in the Prise I action. The second action, *Prise v. Alderwoods*
20 *Group, Inc., et al.*, (N.D.Cal. 07-cv-5140)("Prise II") was a class action brought by current and
21 former employees for violation of various states' wage and hour laws, as well as for violations of
22 state common laws. That case was voluntarily dismissed without prejudice on December 5, 2007.
23 None of the Plaintiffs in the instant action were named plaintiffs in the Prise II action.

24 **11. Relief**

25 Plaintiffs seek to recover all overtime compensation denied them because of Defendants'
26 policies. In addition, Plaintiffs seek liquidated damages in an equal amount. Further, Plaintiffs
27 are entitled to attorneys' fees and costs. Plaintiffs will also seek any other damages to which they
28 are entitled under federal or state law. It is premature to estimate the total amount of damages.

12. **Settlement and ADR**

At the present time, given that Defendants have not yet been served, no settlement discussions have occurred. Most likely, the appropriate time for the parties to engage in settlement discussions would be after a decision has been rendered on plaintiffs' Motion for Conditional Certification.

13. **Consent to Magistrate Judge Jurisdiction**

Because defendants have not yet been served, the parties have not discussed whether they will consent to magistrate judge jurisdiction.

14. **Other References**

Plaintiffs do not believe the case is suitable for reference to binding arbitration, a special master or multidistrict litigation.

15. **Narrowing of Issues**

Because defendants have not yet been served, the parties have not discussed whether the issues can be narrowed by agreement or by motion or how to expedite the presentation of evidence at trial.

16. **Expedited Schedule**

Plaintiffs do not believe this case can be handled on an expedited basis, except their motion for conditional certification should be given expedited consideration due to statute of limitations issues.

17. **Scheduling**

Plaintiffs propose that deadlines for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference and trial be set after a decision is rendered on their motion for conditional certification.

18. **Trial**

Plaintiffs have demanded a jury trial. Plaintiffs believe the trial may last up to one month.

19. **Disclosure of Non-party Interested Entities or Persons**

Other than the parties, including the putative class members, plaintiffs are not aware of any other person, firm, partnership or corporation with a financial interest in the subject matter in

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1 controversy or in a party to the proceeding or any other kind of interest that could be substantially
2 affected by the outcome of this proceeding.

3 Respectfully Submitted,

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5 ROSEN, BIEN & GALVAN, LLP

6 Date: February 12, 2008

7 By: /s/ Lori Rifkin

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EXHIBIT P

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NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

CLAUDE BRYANT, CRAIG FULCHER,
SANFORD LEVINE and THOMAS
THOMPSON,
on behalf of themselves
and all employees similarly situated,

Plaintiffs,

- vs -

ALDERWOODS GROUP, INC., SERVICE
CORPORATION INTERNATIONAL, SCI
FUNERAL AND CEMETERY PURCHASING
COOPERATIVE, INC., SCI EASTERN
MARKET SUPPORT CENTER, L.P., SCI
WESTERN MARKET SUPPORT CENTER,
L.P. a/k/a SCI WESTERN MARKET
SUPPORT CENTER, INC., SCI HOUSTON
MARKET SUPPORT CENTER, L.P., JANE D.
JONES, GWEN PETTEWAY, THOMAS
RYAN, PAUL A. HOUSTON and CURTIS
BRIGGS,

Defendants.

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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NOTICE OF PENDENCY
OF OTHER ACTIONS
Local Rule 3-13

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1 NOTICE OF PENDENCY OF OTHER ACTIONS

2 Pursuant to Local Rule 3-13, Plaintiffs hereby notify this Court of two actions currently
3 pending in federal courts which involve a material part of the same subject matter as the instant
4 action, in that all of these proceedings relate to the defendant's policies and practices regarding
5 their employees' overtime pay.

6 The first action, *Prise v. Alderwoods Group, Inc. et al.*, 07-cv-1641 (W.D.P.A., filed
7 December 8, 2006) ("Prise I"), is a collective action under the Fair Labor Standards Act
8 brought by defendants' current and former employees. None of the plaintiffs in the instant
9 action are parties to the Prise I litigation. In fact, by order of the Prise I court, the opt-in period
10 in that case has passed for most of the plaintiffs in the instant action, and therefore most of the
11 plaintiffs in this action are not eligible to participate in the Prise I action.

12 The second action, *Prise v. Alderwoods Group, Inc. et al.*, 07-cv-5140 (N.D. Cal., filed
13 October 5, 2007) ("Prise II"), is a class action brought by current and former employees for
14 violations of various states' wage and hour laws, as well as for violations of state common
15 laws. The claims in Prise II were initially asserted in the Prise I action but, at the defendants'
16 request, the Prise I court declined to exercise supplemental jurisdiction over these claims.
17 Prise II was then filed in state court and was subsequently removed to federal court by the
18 defendants. Neither of the federal law claims asserted in the instant action are at issue in Prise
19 II, which involves only state law claims that have been removed to federal court. None of the
20 plaintiffs in the instant action are currently named plaintiffs in Prise II although, in the event
21 that a class is certified in Prise II, some of the plaintiffs in the instant action may also become
22 class members in that action.

23 Transfer should not be effected pursuant to 28 U.S.C. § 1407 because the common
24 questions of fact between the instant case and Prise I, the federal case in Pennsylvania, are not
25 sufficiently complex to warrant transfer. Furthermore, the accompanying discovery is not so
26 time consuming that transfer would serve the convenience of parties and witnesses or promote
27 just and efficient conduct of the litigation. Additionally, defendants previously argued that the
28

1 state law claims raised in *Prise II* are inherently incomparable with the federal law claims
2 raised in *Prise I* and in the instant action.

3 Respectfully Submitted,

4 ROSEN, BIEN & GALVAN, LLP

5
6 Date: November 8, 2007

7 By: 

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

WILLIAM HELM, DEBORAH PRISE,
HEATHER P. RADY, et al., on behalf of
themselves and all other employees and former
employees similarly situated,

Plaintiffs,

v.

ALDERWOODS GROUP, INC., PAUL A.
HOUSTON, SERVICE CORPORATION
INTERNATIONAL, SCI FUNERAL AND
CEMETERY PURCHASING
COOPERATIVE, INC., SCI EASTERN
MARKET SUPPORT CENTER, L.P., SCI
WESTERN MARKET SUPPORT CENTER,
L.P. a/k/a SCI WESTERN MARKET
SUPPORT CENTER, INC., and SCI
HOUSTON MARKET SUPPORT CENTER,
L.P.,

Defendants.

Case No. CV 08-1184 JSW

**PLAINTIFFS' STATEMENT IN
SUPPORT OF RELATING CASES**

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1 **STATEMENT IN SUPPORT OF RELATING CASES**

2 Plaintiffs submit this Statement in Support of Relating Cases in response to Judge
3 Jeffrey S. White's *sua sponte* Judicial Referral for Purposes of Determining Relationship
4 of Cases (*see* Case No. 08-1184, Docket No. 26). Plaintiffs respectfully submit that, in
5 light of the prior decision relating two other actions currently pending in the District Court
6 for the Northern District of California—*Bryant v. Alderwoods Group, Inc.*, Case No. 07-
7 5696 (“*Bryant I*”) and *Bryant v. Service Corporation International*, Case No. 08-1190
8 (“*Bryant II*”)—the instant action (“*Helm*”) should be related to those other actions.

9 Plaintiffs initially filed the claims asserted in *Helm*, *Bryant I* and *Bryant II* together
10 with other claims in an action in the District Court for the Western District of Pennsylvania
11 captioned *Prise v. Alderwoods Group, Inc.*, Case No. 06-1641 (“*Prise*”). All of the claims
12 in each of these actions are based upon the allegation that employees who worked at
13 defendants’ funeral home locations were not properly paid their regular or statutorily
14 required rates for all the time they worked for defendants.

15 At defendants’ request, however, the *Prise* Court determined that certain claims
16 would not be heard together in that action. Based upon the *Prise* Court’s rulings, as well
17 as defendants’ position which resulted in those rulings, plaintiffs refiled certain claims
18 separately in the *Helm*, *Bryant I* and *Bryant II* actions.

19 However, consistent with plaintiffs’ initial filing and in light of the prior
20 determination that *Bryant I* and *Bryant II* are related, plaintiffs submit that the *Helm* action
21 should also be related.

22 **PROCEDURAL HISTORY**

23 ***Plaintiffs File All Claims Together in the Western District of Pennsylvania***

24 On December 12, 2006, Alderwoods Group, Inc. (“Alderwoods”) and Service
25 Corporation International (“SCI”), both named defendants in this action, were named in
26 the *Prise* complaint filed in the Western District of Pennsylvania. Prior to the filing of
27 *Prise*, SCI had acquired Alderwoods and Alderwoods had become SCI’s wholly-owned
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1 subsidiary. After the merger, SCI continued to operate the vast majority of both its own
2 funeral homes and those of Alderwoods.

3 The *Prise* complaint was filed as a class and collective action alleging, *inter alia*,
4 that employees who worked at defendants' funeral home locations were not properly paid
5 for all the time they worked for defendants. It asserted violations of both the Fair Labor
6 Standards Act ("FLSA") and state wage and hour laws. The *Prise* Court conditionally
7 certified an FLSA class of employees and directed that notice be sent to certain individuals
8 who worked or had worked at an Alderwoods location. In response to that notice,
9 hundreds of current and former employees opted-in to the *Prise* action, including
10 employees who had worked only at Alderwoods locations, before and/or after SCI's
11 acquisition ("Alderwoods employees"), and employees who had worked at other SCI
12 locations unrelated to Alderwoods ("SCI employees").

13
14 Both Alderwoods and SCI employed a set of practices or policies whereby
15 employees were not paid their regular or statutorily required rate for all hours worked.
16 Thus, because of the overlapping legal liability of defendants, as well as the overlapping
17 factual issues in the matter, plaintiffs believed it was legally appropriate and in the
18 interests of judicial efficiency for defendants to be named in a common action and for all
19 of the employees' claims to be brought together.

20 ***Defendants Move to Have Certain Claims Heard Separately***

21 Based on defendants' requests in their motions, the *Prise* Court determined that
22 certain claims would not be heard together in the *Prise* action. Following these rulings,
23 plaintiffs refiled those claims in the *Bryant I*, *Helm* and *Bryant II* actions.

24 As an initial matter, in granting plaintiffs' motion for notice the *Prise* Court also
25 provided a deadline by which individuals who wished to join that action must opt-in.
26 Employees who asked to assert claims against defendants but could not join the *Prise*
27 action because of the deadline were joined together with certain other individuals in the
28 *Bryant I* action.

1 In June, 2007, the *Prise* Court declined to exercise supplemental jurisdiction over
2 any of the state law claims alleged in the *Prise* action. Therefore, on or about July 9, 2007,
3 the Alderwoods employees and the SCI employees jointly reasserted their state law claims
4 in a Class Action Complaint filed in the Superior Court of the State of California for the
5 County of Alameda. Defendants removed that action to federal District Court for the
6 Northern District of California as *Prise v. Alderwoods Group, Inc.*, 07-05140 (the
7 “Combined State Law Action”).

8 Subsequently, the *Prise* Court determined it would only hear claims on behalf of
9 Alderwoods employees, and that claims of employees who had worked only at other SCI
10 locations should be heard in a separate action. Based on that ruling, the federal claims of
11 those SCI employees were refiled in a separate action in the District of Arizona.

12 Based upon defendants’ position that resulted in that ruling, the Combined State
13 Law Action was voluntarily dismissed so that the state law claims of the Alderwoods
14 employees could be heard separately from those of the SCI employees—just as the *Prise*
15 Court had ruled that their federal claims would be filed separately. Those state law claims
16 were refiled by the Alderwoods employees in *Helm*, while the SCI employees filed their
17 state law claims in *Bryant II*. Both *Helm* and *Bryant II* were initially filed in state court
18 and removed to federal district court by defendants.

19 Thus, three actions are now pending in the Northern District of California: *Bryant I*,
20 which asserts FLSA claims on behalf of Alderwoods employees who were unable to join
21 the *Prise* action; *Helm*, which asserts the state law claims of Alderwoods employees; and
22 *Bryant II*, which asserts the state law claims of SCI employees. On March 11, 2008, the
23 Court ruled that the *Bryant I* and *Bryant II* actions are related. *See Bryant II*, Case No. 08-
24 1190, Docket No. 27. On March 13, 2008, the *Helm* matter was referred for determination
25 as to whether it, too, should be related to the *Bryant* actions. *See Helm*, Case No. 08-1184,
26 Docket No. 26.
27
28

HELM SHOULD BE RELATED TO THE OTHER ACTIONS

As discussed above, plaintiffs initially filed all of the claims at issue in a single action because plaintiffs believed that the overlapping legal liability of defendants, as well as the overlapping factual issues in the matter, rendered it legally appropriate and in the interests of judicial efficiency for these claims to be brought together. The claims were filed in separate actions only in response to defendants' arguments and positions.

There is significant overlap in the parties to these actions. Although some of the plaintiffs may be neatly defined as either Alderwoods employees or SCI employees, other plaintiffs fall into both categories. Moreover, with the exception of Alderwoods, which is not named in *Bryant II*, there is complete overlap in the corporate defendants in these actions, although individual defendants vary somewhat. Finally, there is significant factual overlap in these cases, which involve similar or identical policies and practices.

Most importantly, the ruling relating the *Bryant I* and *Bryant II* actions weighs in favor of relating the *Helm* action. The plaintiffs in the *Helm* action include the plaintiffs in the *Bryant I* action (and may, to a lesser extent, overlap with the plaintiffs in *Bryant II*). The state law claims at issue in *Helm* are nearly identical to those at issue in *Bryant II*.

Thus, plaintiffs submit that, in light of the determination that *Bryant I* and *Bryant II* are related, *Helm* should also be related in the interest of judicial efficiency.

Respectfully Submitted,
ROSEN, BIEN & GALVAN, LLP

Date: March 17, 2008

By: /s/ Lori Rifkin

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